

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

JACK L. EARL, JR.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
CRAIG TURNBULL,	)	
	)	No. A02-0224-CV (HRH)
Respondent.	)	
_____	)	

O R D E R

Petition for Habeas Corpus - Motion to Dismiss

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> There have been extensive proceedings on this petition which have winnowed the issues to be considered down to three matters, the merits of which have been briefed by petitioner and by respondents' state custodian. Petitioner contends that the state trial court's denial of his motion for a mistrial based on the positioning of security guards during the testimony of in-custody witnesses violated his right to a fair trial, and that the state court's failure to suppress his statements made to police was constitutional error because the statements were given pursuant to an interrogation conducted in violation of Miranda v. Arizona, 384 U.S. 436 (1966), or, alternatively, that the statements were involuntary and therefore inadmissible under the Fifth Amendment to the United States Constitution. Petitioner's third contention -

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<sup>1</sup>Docket No. 8.

that his consent to providing blood and urine samples was involuntary and their seizure a violation of the Fourth Amendment to the Constitution - has been made the subject of a motion to dismiss by respondent.<sup>2</sup> The motion to dismiss is opposed.

No evidentiary hearing in connection with the petition or motion was held, nor was any such hearing necessary in light of the fact that there are not contested issues of fact. The issues before the court all have to do with decisions and events in state courts, as to which the record is clear and undisputed as to the events that give rise to petitioner's contentions.

The issues and briefing now under consideration have been evaluated by the assigned United States magistrate judge who served and filed an initial report and recommendation.<sup>3</sup> Provision was made for the filing of objections, and objections were filed on behalf of petitioner.<sup>4</sup> The state has responded.<sup>5</sup> As a consequence of petitioner's objections, certain clearly identified revisions have been made with respect to the report and recommendation.<sup>6</sup> The court has now received the final report and recommendation of the magistrate judge as to both the merits of the petition and respondent's motion to dismiss.<sup>7</sup>

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<sup>2</sup>Docket No. 90.

<sup>3</sup>Docket No. 100.

<sup>4</sup>Docket No. 105.

<sup>5</sup>Docket No. 111.

<sup>6</sup>Final Report and Recommendation at 32, Docket No. 112.

<sup>7</sup>Id.

Having fully reviewed the merits of petitioner's first and second contentions, the court adopts the magistrate judge's findings as regards the facts and proceedings relevant to the same; and, for the reasons and upon the authorities set forth by the magistrate judge, the court concludes that the petition must be denied as to petitioner's first and second contentions. As to these contentions, there is no cognizable constitutional error. With respect to petitioner's third contention, the court finds that the relevant facts are as set forth by the magistrate judge; and, for the reasons and upon the authorities set forth by the magistrate judge, the court concludes that the respondent's motion to dismiss must be granted. Petitioner's search and seizure claim was fully and fairly considered in the state court proceedings and thus is not reviewable on petition for habeas corpus.

Conclusion

The petition for a writ of habeas corpus is denied on the merits as to petitioner's first and second contentions, and is dismissed as to petitioner's third contention. The petition is now fully adjudicated, and the clerk of court shall enter a judgment dismissing the petition.

DATED at Anchorage, Alaska, this 24th day of July, 2008.

/s/ H. Russel Holland  
United States District Judge